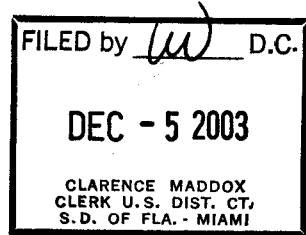


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA



IN RE:


AMENDED Administrative Order 2003-115

**AMENDMENTS TO THE LOCAL RULES -
NOTICE OF PROPOSED AMENDMENTS,
OF OPPORTUNITY FOR PUBLIC COMMENTS,
AND OF HEARING TO RECEIVE COMMENTS**

The Court's Ad Hoc Committee on Rules and Procedures has recommended that this Court amend Local General Rules 1.1, 7.1, 16.1, 16.2, 23.1, and 26.1 in the form attached. In accordance with Fed.R.Civ.P. 83(a)(1) and Fed.R.Crim.P. 57(a)(1), it is hereby

ORDERED that the Clerk of the Court is hereby directed, for the next 30 days: (a) to publish this Order (without the attachments) three times per week in the Daily Business Review (in the editions published in Miami-Dade, Broward and Palm Beach Counties, Florida); and (b) to offer every person who files any papers in any action in this Court, and to give to anyone who so desires, a copy of this Order with the attached proposed rule amendments.

IT IS FURTHER ORDERED that the Court will conduct an *en banc* public hearing on the proposed rule amendments on the 16th day of January, 2004 at 4:00 o'clock p.m. at the David W. Dyer Federal Building and United States Courthouse, 300 Northeast First Avenue, Central Courtroom, Miami, Florida. Those who desire to appear and offer oral comments on the proposed rule amendments at this hearing shall file written notice to that effect with the Clerk of the Court no later than five days prior to the hearing. Those who desire to offer only written comments on the proposed rule amendments must file their written comments with the Clerk of the Court no later than ten days prior to the hearing.

 **DONE AND ORDERED** in Chambers at Fort Lauderdale, Broward County, Florida this day of December 2003.


WILLIAM J. ZLOCH
CHIEF UNITED STATES DISTRICT JUDGE

c: Honorable J. L. Edmondson, Chief Judge, Eleventh Circuit Court of Appeals
All Southern District Judges
All Southern District Magistrate Judges
Norman E. Zoller, Circuit Executive, Eleventh Circuit
All Members of the Ad Hoc Committee on Rules and Procedures
Brian F. Spector, Chair, Ad Hoc Committee on Rules & Procedures
Library
Daily Business Review

GENERAL RULES

RULE 1.1 SCOPE OF THE RULES

* * * * *

B. Effective Date. These rules become effective February 15, 1993, provided however, that the 1994 amendments shall take effect on December 1, 1994, the 1996 amendments shall take effect on April 15, 1996, the 1997 amendments shall take effect on April 15, 1997, the 1998 amendments shall take effect on April 15, 1998, the 1999 amendments shall take effect on April 15, 1999, the 2000 amendments shall take effect on April 15, 2000, the 2001 amendments shall take effect on April 15, 2001, and the 2002 amendments shall take effect on April 15, 2002, ~~and~~ the 2003 amendments shall take effect on April 15, 2003, and the 2004 amendments shall take effect on April 15, 2004, and shall govern all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending

* * * * *

RULE 7.1 MOTIONS, GENERAL

A. Filing.

* * * *

3. Pre-filing Conferences Required of Counsel.

(a) Prior to filing any motion in a civil case, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, or to involuntarily dismiss an action, or any motion relating to discovery, counsel for the ~~moving party~~ movant shall confer (orally or in writing), or make reasonable effort to confer (orally or in writing), with ~~counsel for the opposing party~~ all parties or non-parties who may be affected by the relief sought in the motion in a good faith effort to resolve by agreement the issues to be raised in the motion, ~~and counsel for the opposing party shall cooperate with such efforts to confer and be obligated to act in good faith in attempting to resolve the matters at issue.~~ Counsel conferring with movant's counsel shall cooperate and act in good faith in attempting to resolve the dispute. At the time of filing the motion, counsel for the moving party shall file with the Clerk a statement certifying either: (a) that counsel have conferred in a good faith effort to resolve the issues raised in the motion and have been unable to do so that counsel for the movant has conferred with all parties or non-parties who may be affected by the relief sought in the motion in a good faith effort to resolve the issues raised in the

1 motion and has been unable to do so; or (b) that counsel for the moving party has
2 made reasonable effort (which shall be identified with specificity in the statement)
3 to confer with the opposing party but has been unable to do so that counsel for the
4 movant has made reasonable efforts to confer with all parties or non-parties who
5 may be affected by the relief sought in the motion, which efforts shall be
6 identified with specificity in the statement, but has been unable to do so. If
7 certain of the issues have been resolved by agreement, the statement shall specify
8 the issues so resolved and the issues remaining unresolved. Failure to comply
9 with the requirements of this rule may be cause for the court to grant or deny the
10 motion and impose on counsel an appropriate sanction, which may include an
11 order to pay the amount of the reasonable expenses incurred because of the
12 violation, including a reasonable attorney's fee.

13
14 ~~(b) The pre-filing conferences required of counsel on discovery motions are~~
15 ~~governed by Local Rule 26.1.I.~~

16
17 ~~4. Every motion when filed shall also be accompanied by stamped, addressed~~
18 ~~envelopes for each party entitled to notice of the Order when issued by the Judge.~~

19
20 * * * *

21
22 **C. Memorandum of Law. . . .**

- 23
24 2. *Length.* Absent prior permission of the Court, no party shall file any legal
25 memorandum exceeding twenty (20) pages in length, with the exception
26 of a reply which shall not exceed ten (10) pages in length. The practice of
27 filing multiple motions for partial summary judgment ~~which are~~
28 ~~collectively intended to dispose of the case (as opposed to one~~
29 ~~comprehensive motion for summary judgment) in order to evade~~
30 ~~memorandum page limitations is specifically~~ shall be prohibited, absent
31 prior permission of the Court.

32
33 **Comments**

34
35 (2004) Local Rule 7.1.A.3 is amended in conjunction with deletion of Local Rule 26.1.I's
36 text to avoid confusion and clarify pre-filing conference obligations. Local Rule 7.1.A.4 is
37 deleted in light of almost universal participation in the District's automated noticing program
38 ("FaxBack"). The last sentence in Local Rule 7.1.C.2 is amended to prohibit, absent prior
39 permission from the Court, the filing of multiple motions for partial summary judgment. This
40 amendment is made in conjunction with the amendment of Local Rule 16.1.B.2 to emphasize the
41 need to discuss at the scheduling conference of parties and/or counsel the number and timing of
42 motions for summary judgment or partial summary judgment, and have the Scheduling Order
43 address these issues.

RULE 16.1 PRETRIAL PROCEDURE IN CIVIL ACTIONS

* * * *

B. Scheduling Conference and Order.

2. Conference Report and Order. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for submitting to the Court, within fourteen (14) days of the conference, a written report outlining the discovery plan and discussing

(a) the likelihood of settlement;

(b) the likelihood of appearance in the action of additional parties;

(c) proposed limits on the time:

(i) to join other parties and to amend the pleadings;

(ii) to file and hear motions; and

(iii) to complete discovery.

(d) proposals for the formulation and simplification of issues, including the elimination of frivolous claims or defenses, and the number and timing of motions for summary judgment or partial summary judgment;

(e) the necessity or desirability of amendments to the pleadings;

(f) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding authenticity of documents and the need for advance rulings from the Court on admissibility of evidence;

(g) suggestions for the avoidance of unnecessary proof and of cumulative evidence;

(h) suggestions on the advisability of referring matters to a magistrate judge or master;

(i) a preliminary estimate of the time required for trial;

(j) requested date or dates for conferences before trial, a final pretrial conference, and trial; and

(k) any other information that might be helpful to the Court in setting the case for status or pretrial conference. . . .

* * * *

L. Proposed Jury Instructions or Proposed Findings of Facts and Conclusions of Law. At the close of the evidence or at an earlier reasonable time that the Court directs beginning of the trial, counsel ~~shall~~ may submit proposed jury instructions or, where appropriate, proposed findings of fact and conclusions of law to the Court, with copies to all other counsel ~~or where appropriate proposed findings of fact and conclusions of law.~~ At the close of the evidence, a party may: file additional ~~Additional~~ instructions covering matters occurring at

1 the trial ~~which~~ that could not reasonably be anticipated; and, with the Court's
2 permission, file untimely requests for instructions on any issue ~~shall be submitted~~
3 ~~prior to the conclusion of the testimony.~~

4
5 **Comments**

6
7 (2004) Local Rule 16.1.B.2 is amended, in conjunction with the amendment of the last
8 sentence in Local Rule 7.1.C.2, to emphasize the need to discuss at the scheduling conference
9 of parties and/or counsel the number and timing of motions for summary judgment or partial
10 summary judgment, and have the Scheduling Order address these issues. Local Rule 16.1.L
11 is amended to conform to the December 2003 amendment to Fed.R.Civ.P. 51.

12 * * * * *

13
14 **RULE 16.2 COURT ANNEXED MEDIATION**

15 * * * *

16
17 **H. Forms for Use in Mediation.**

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21 **UNITED STATES DISTRICT COURT**
22 **SOUTHERN DISTRICT OF FLORIDA**

23
24
25
26
27 **CAPTION**
28
29

Civil Action No. _____

30
31 Trial having been set in this matter for _____, ~~19~~ 20, pursuant to Federal
32 Rule of Civil Procedure 16 and Southern District Local Rule 16.2, it is hereby

33
34 **ORDERED AND ADJUDGED** as follows:

35
36 1. All parties are required to participate in mediation. The mediation shall be
37 completed no later than 60 days before the scheduled trial date.

38
39 2. Plaintiff's counsel, or another attorney agreed upon by all counsel of record and
40 any unrepresented parties, shall be responsible for scheduling the mediation conference. The
41 parties are encouraged to avail themselves of the services of any mediator on the List of Certified
42 Mediators, maintained in the office of the Clerk of this Court, but may select any other mediator.

1 The parties shall agree upon a mediator within fifteen (15) days from the date hereof. If there is
2 no agreement, lead counsel shall promptly notify the Clerk in writing and the Clerk shall
3 designate a mediator from the List of Certified Mediators, which designation shall be made on
4 a blind rotation basis.

5
6 3. A place, date and time for mediation convenient to the mediator, counsel of
7 record, and unrepresented parties shall be established. The lead attorney shall complete the form
8 order attached and submit it to the Court.

9
10 4. The appearance of counsel and each party or representatives of each party with
11 full authority to enter into a full and complete compromise and settlement is mandatory. If
12 insurance is involved, an adjuster with authority up to the policy limits or the most recent
13 demand, whichever is lower, shall attend.

14
15 5. All discussions, representations and statements made at the mediation conference
16 shall be confidential and privileged.

17
18 6. At least ten days prior to the mediation date, all parties shall present to the
19 mediator a brief written summary of the case identifying issues to be resolved. Copies of these
20 summaries shall be served on all other parties.

21
22 7. The Court may impose sanctions against parties and/or counsel who do not
23 comply with the attendance or settlement authority requirements herein who otherwise violate
24 the terms of this Order. The mediator shall report non-attendance and may recommend
25 imposition of sanctions by the Court for non-attendance.

26
27 8. The mediator shall be compensated in accordance with the standing order of the
28 Court entered pursuant to Rule 16.2.B.6, or on such basis as may be agreed to in writing by the
29 parties and the mediator selected by the parties. The cost of mediation shall be shared equally
30 by the parties unless otherwise ordered by the Court. All payments shall be remitted to the
31 mediator within 30 days of the date of the bill. Notice to the mediator of cancellation or
32 settlement prior to the scheduled mediation conference must be given at least two (2) full
33 business days in advance. Failure to do so will result in imposition of a fee for one hour.

34
35 9. If a full or partial settlement is reached in this case, counsel shall promptly notify
36 the Court of the settlement in accordance with Local Rule 16.2.F., by the filing of a notice of
37 settlement signed by counsel of record within ten (10) days of the mediation conference.
38 Thereafter the parties shall forthwith submit an appropriate pleading concluding the case.

39
40 10. Within five (5) days following the mediation conference, the mediator shall file
41 a Mediation Report indicating whether all required parties were present. The report shall also
42 indicate whether the case settled (in full or in part), was continued with the consent of the parties,
43 or whether the mediator declared an impasse.

11. If mediation is not conducted, the case may be stricken from the trial calendar, and other sanctions may be imposed.

DONE AND ORDERED this ____ day of ____, ~~19~~ 20.

U.S. District Judge

Copies furnished:
All counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CAPTION

:

Civil Action No. _____

ORDER SCHEDULING MEDIATION

The mediation conference in this matter shall be held with _____ on
_____, ~~19~~ 20, at ____ (am/pm) at _____, Florida.

ENTERED this ____ day of ____, ~~19~~ 20.

U.S. District Judge

RULE 23.1 CLASS ACTIONS

* * * *

3. ~~Within 90 days after the filing of a complaint in a class action, unless this period is extended on motion for good cause appearing, the plaintiff shall move for a determination under subdivision (c)(1) of Rule 23, Fed.R.Civ.P., as to whether the case is to be maintained as a class action. In ruling upon such any motion by a putative class action plaintiff for a determination under subdivision (c)(1) of Fed.R.Civ.P. 23 as to whether an action is to be maintained as a class action, the Court may allow the action to be so maintained, may disallow and strike the class action allegations, or may order postponement of the determination pending discovery or such other preliminary procedures as appear to be appropriate and necessary in the circumstances. Whenever possible, where it is held that the determination should be postponed, a date will be fixed by the Court for renewal of the motion.~~

Comments

(2004) Local Rule 23.1.3 is amended to delete the requirement that a class action plaintiff move, within 90 days after the filing of the complaint, for a determination under Fed.R.Civ.P. 23(c)(1) as to whether the action should be maintained as a class action, to conform to the December 2003 amendment to Fed.R.Civ.P. 23(c)(1)(A), which clarifies that a Court may defer the decision on whether to certify a class if it is prudent to do so.

* * * * *

RULE 26.1 DISCOVERY AND DISCOVERY DOCUMENTS (CIVIL)

* * * *

I. Certificate of Counsel. ~~Prior to filing any discovery motion, counsel for the movant shall confer, or make reasonable efforts to confer, orally or in writing, with all parties or non-parties who may be affected by the relief sought in the motion, in a good faith effort to resolve the discovery dispute. Counsel conferring with movant's counsel shall cooperate and act in good faith in attempting to resolve the dispute. All discovery motions shall contain a statement certifying either: (a) that counsel for the movant has conferred with all parties or non-parties who may be affected by the relief sought in the motion in a good faith effort to resolve the issues raised in the discovery motion and has been unable to do so; or (b) that counsel for the movant has made reasonable efforts to confer with all parties or non-parties who may be affected by the relief sought in the motion, which efforts shall be identified with specificity in the statement, but has been~~

1 ~~unable to do so. If certain of the issues have been resolved by agreement, the~~
2 ~~statement shall specify the issues so resolved and the issues remaining unresolved.~~
3 ~~Failure to comply with the requirements of this rule may be cause for the court to~~
4 ~~grant or deny the discovery motion and impose on counsel an appropriate~~
5 ~~sanction, which may include an order to pay the amount of the reasonable~~
6 ~~expenses incurred because of the violation, including a reasonable attorney's fee.~~
7 See Local Rule 7.1.A.3 and Fed.R.Civ.P. 37(a)(2).
8

9 **Comments**

10
11 (2004) Local Rule 26.1.I is amended in conjunction with the amendment of Local
12 Rule 7.1.A.3 to avoid confusion and clarify pre-filing conference obligations.
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